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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

RAO BOPPANA et al.,

Plaintiffs and Appellants,

v.

CITY OF LOS ANGELES,

Defendant and Respondent;

ROBERT NOLAN,

Real Party in Interest and Respondent.

B283454

(Los Angeles County Super. Ct. No. BS159371)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Reversed and remanded with directions.

Craig A. Sherman for Plaintiffs and Appellants.

Michael N. Feuer, City Attorney, and Gabriel S. Dermer, Assistant City Attorney, for Defendant and Respondent.

Turner Law Firm, Keith J. Turner and April Ramirez for Real Party in Interest and Respondent.

INTRODUCTION

Rao Boppana and his wife, Rita Boppana, appeal from a judgment denying their petition for writ of mandate under Code of Civil Procedure section 1085. The Boppanas sought an order requiring the City of Los Angeles, Department of Public Works, Bureau of Engineering (the Bureau) to revoke a permit it issued to the Boppanas' neighbor, Robert Nolan, under Los Angeles Municipal Code section 62.118.2.[1] Section 62.118.2 authorizes the Bureau to issue a revocable permit for a "building, structure or improvement maintained . . . within a public street," provided the structure "will not interfere with the maintenance or use of the street, and is not intended for use by the public."

The permit the Bureau issued Nolan under section 62.118.2 authorized him to maintain fences, gates, and other improvements to his personal residence in the public right-of-way adjoining his property. The Bureau issued the permit, however, without determining whether Nolan's improvements complied with the Los Angeles Building Code (Chapter IX, Article 1, sections 91.101.1 et seq. of the Los Angeles Municipal Code), the Comprehensive Zoning Plan of the City of Los Angeles (Chapter 1, Article 2, section 12.00 et seq. of the Los Angeles Municipal Code), and the Coastal Bluffs Specific Plan. The Boppanas argue the City's "zoning and building regulations" apply to Nolan's construction. The City argues that, because Nolan's improvements are in a public right-of-way, they are not subject to the municipal laws governing land use, and the Bureau did not have to determine whether Nolan's fences, gates, and other

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[1] Undesignated section references are to the Los Angeles Municipal Code.

improvements complied with the Building Code, the Zoning Plan, and the Specific Plan. Because the Boppanas' interpretation of the relevant ordinances is more reasonable, we reverse the judgment and remand with directions to issue a writ of mandate compelling the Bureau to revoke the permit it issued to Nolan.

PROCEDURAL AND FACTUAL BACKGROUND

A. *Nolan Obtains a Revocable Permit*

The Boppanas and Nolan live next to each other in a residential neighborhood on a coastal bluff in the Playa del Rey area of Los Angeles. There is a 10-foot wide public right-of-way, known as the Veragua Walk, between the two properties. A public trail and small park abut a vacant lot Nolan owns on the other side of his property.

Desiring security for his family, Nolan in 2006 built a security fence, a driveway gate, and other improvements to his property. Along approximately 100 feet of Berger Avenue, the public street in front of his house, and at a maximum height of six feet, Nolan built two wooden sliding gates, seven pillars, a wooden pedestrian entry gate, and a wrought-iron fence, together with 535 square feet of concrete.[2] Along Veragua Walk, Nolan built a concrete block wall ranging in height from one foot to seven feet, a chain-link fence ranging in height from three feet to five feet, a two-foot tall planter box, and two sets of concrete steps. Nolan also installed landscaping along the street and the

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[2] Nolan stated in a declaration, and the trial court found, there was no sidewalk in front of his house. The Boppanas do not argue Nolan's improvements interfered with or replaced a sidewalk.

walk. Nolan built these improvements, which we refer to as Nolan's fences and gates, "beyond his property line" and on land contiguous to his property "that is a dedicated public street."

In 2015 Nolan applied to the Bureau for a revocable permit, which the Bureau refers to as an "R-Permit," to maintain the improvements he constructed almost a decade earlier. Jim Burman, a civil engineer employed by the Bureau who had responsibility for reviewing and approving revocable permits, inspected Nolan's fences and gates on two separate occasions, as did two other Bureau engineers (once each). Burman concluded, as required by section 62.118.2, that Nolan's fences and gates would not interfere with the maintenance or use of the street and were not intended for use by the public. The Bureau issued Nolan a revocable permit.

B. *The Boppanas Petition for a Writ of Mandate*

After they learned Nolan had applied to the Bureau for a revocable permit to maintain his improvements, the Boppanas filed a petition for writ of mandate to require the Bureau to revoke any permit it may have issued.[3] The Boppanas argued the City improperly issued Nolan's revocable permit without reviewing Nolan's application for compliance with applicable

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[3] This was not the first time the neighbors had crossed litigation swords. In an action still pending in the superior court, Nolan is seeking declaratory relief concerning use of Veragua Walk and vegetation on the Boppanas' property, and the Boppanas are suing Nolan over construction on Nolan's property. The Boppanas learned the Bureau had issued Nolan the revocable permit at issue in this action through discovery in the civil action. The Bureau ultimately issued Nolan's permit the same day the Boppanas filed their petition.

provisions of the Building Code, Zoning Plan, and Specific Plan. The trial court agreed with the City and Nolan that the Bureau did not abuse its discretion or fail to comply with applicable procedures because the Building Code, Zoning Plan, and Specific Plan did not apply to structures built in a public right-of-way. The trial court entered a judgment denying the writ, and the Boppanas timely appealed.

DISCUSSION

A. *Applicable Law and Standard of Review*

Code of Civil Procedure section 1085 authorizes courts to issue a writ of mandate "to compel public agencies to perform acts required by law. [Citation.] To obtain relief, a petitioner must demonstrate (1) no 'plain, speedy, and adequate' alternative remedy exists [citation]; (2) 'a clear, present, . . . ministerial duty on the part of the respondent'; and (3) a correlative 'clear, present, and beneficial right in the petitioner to the performance of that duty.'" (*People v. Picklesimer* (2010) 48 Cal.4th 330, 339-340; accord, *International Brotherhood of Teamsters, Local 848 v. City of Monterey Park* (2019) 30 Cal.App.5th 1105, 1111; see Code Civ. Proc, § 1086.) "'A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists.'" (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916; see *County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 593.) "When an appellate court reviews a trial court's judgment on a petition for a traditional writ of

mandate [under Code of Civil Procedure section 1085], it . . . independently reviews the trial court's conclusions on questions of law, which include the interpretation of a statute and its application to undisputed facts." (*California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432, 1443; see *Tower Lane Properties v. City of Los Angeles* (2014) 224 Cal.App.4th 262, 268 ["'[i]nterpretation of an ordinance presents a question of law that we review de novo'"]; *California School Bds. Assn. v. State Bd. of Education* (2010) 186 Cal.App.4th 1298, 1314 ["[i]ndependent review is required . . . where the issue [on a petition for a writ of mandate under Code of Civil Procedure section 1085] involves statutory or regulatory construction"].)

B. *The Parties Agree on Some Things, Dispute Others*

The City and Nolan do not dispute that, had Nolan constructed his improvements on his property rather than on the adjoining public right-of-way, he would have had to comply with the applicable provisions of the Building Code and Zoning Plan. The Building Code, which regulates "the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures erected or to be erected within the City," provides that "[n]o person shall erect, construct, alter, repair, demolish, remove or move any building or structure . . . unless said person has obtained a permit therefor from the [Department of Building and Safety]."[4] (§§ 91.101.2,

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[4] In addition, section 12.26.A.2 provides: "No permit pertaining to the use of land or buildings shall be issued by any department officer, or employee of this City, vested with such duty, unless the application for the permit has been approved by

91.106.1.1.) The provisions of the Zoning Plan "regulate and limit the height . . . of buildings and other structures." (§ 12.02.)

The City and Nolan also do not dispute that Nolan's property is in an area governed by the Specific Plan, which the Los Angeles City Council adopted in 1994. (L.A. Ord. No. 170,046, https://planning.lacity.org/complan/specplan/pdf/COASTBLF.PDF) The Specific Plan applies to "[a]ny construction of or addition to a building or structure constructed in whole or in part on a lot within the Specific Plan area." The Specific Plan includes "residential regulations" that are "in addition to those set forth in the . . . zoning provisions of [the municipal code] . . . and any other relevant ordinances." The Specific Plan restricts the height of buildings and structures in the plan area and takes precedence over any lower building or structure height limit in the Zoning Plan. With respect to "Subarea 2," which appears to include Nolan's property, the "maximum [h]eight of [any building or structure] shall be as provided by the [municipal code]."

The City and Nolan dispute whether provisions of the Building Code, Zoning Plan, and Specific Plan apply to structures or improvements in a public right-of-way maintained under a

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the Department of Building and Safety as to conformance of said use with the provisions of this chapter [which includes the Zoning Plan]. Any permit . . . issued in conflict with the provisions of this chapter, shall be null and void." (See also § 11.02 ["if any permit or license is issued in violation of any provision of this [municipal code] or any other ordinance of the City of Los Angeles the same shall be void"].) There is no evidence Nolan or the Bureau sought or obtained approval from the Department of Building and Safety or the Department of Planning for Nolan's fences and gates.

revocable permit issued by the Bureau. The City argues section 62.118.2 gives the Bureau discretion to issue permits to construct or maintain a building, structure, or improvement in a public right-of-way without regard to the provisions, requirements, or limitations in the Building Code, Zoning Plan, or Specific Plan. According to the City, "the start (and end) of this case is the language of [section] 62.118.2." The Boppanas interpret section 62.118.2 differently. They argue the provisions of the Building Code, Zoning Plan, and Specific Plan apply to revocable permits issued by the Bureau under section 62.118.2. According to the Boppanas, "It is antithetical to both logic and law that private parties (for their homes or businesses) can obtain a revocable permit from a local [Bureau] field office to fully construct multiple structures and developments, without having the structures and developments reviewed, considered, or authorized under the zoning and building codes that control construction within the relevant zone and land use area of [the] city." This appeal requires a resolution of this interpretive dispute.

C. *City Laws Governing Land Use Apply to Buildings, Structures, or Improvements Constructed or Maintained in a Public Right-of-Way*

1. *Section 62.118.2 Is Ambiguous*

Section 62.118.2 states: "Where the City Engineer finds that a building, structure or improvement maintained or proposed to be constructed within a public street[5] will not

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5 Section 62.00 defines "public street" to "mean and include all entities set forth under the definition of the term 'street' in Subsection (a) of Section 11.01 of this [municipal code]. The term

interfere with the maintenance or use of the street, and is not intended for use by the public, the Bureau of Engineering may issue one or more permits for the maintenance or proposed construction of such building, structure or improvement, or for an excavation in connection with such maintenance or construction. The [Bureau] shall charge and collect a fee to conduct an investigation to determine whether to issue a permit pursuant to the provisions of this section . . . ."

To decide the proper interpretation of a municipal ordinance like section 62.118.2, we apply ordinary rules of statutory interpretation. (See *Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839, 847, fn. 8 ["[t]he rules of statutory construction apply equally to the construction of ordinances"]; *Harrington v. City of Davis* (2017) 16 Cal.App.5th 420, 434 ["'[c]ourts interpret municipal ordinances in the same manner and pursuant to the same rules applicable to the interpretation of statutes'"]; *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1087 [same].) "We first examine the statutory language, giving it a plain and commonsense meaning. . . . If the language is clear, courts must generally follow its plain meaning . . . ." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737; see *Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 321.) If, however, """"the language is susceptible of more than one

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shall be construed to include the full width of way dedicated to public use including sidewalk and unpaved areas." Section 11.01(a) states: "'Street' shall include all streets, highways, avenues[,] lanes, alleys, courts[,] places, squares, curbs or other public ways in this City which have been or may hereafter [be] dedicated and open to public use, or such other public property so designated in any law of this State."

reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part."'" (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal.App.5th 1119, 1130; see *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 838; *Schatz v. Allen Matkins Leck Gamble & Mallory LLP* (2009) 45 Cal.4th 557, 571.) "In cases of uncertain meaning, we may also consider the consequences of a particular interpretation." (*Schatz,* at p. 571; see *Even Zohar Construction & Remodeling, Inc.,* at p. 838.)

Section 62.118.2 authorizes the Bureau to grant revocable permits to encroach on a public right-of-way. The ordinance requires the Bureau to determine whether a private-use building, structure, or improvement encroaching on a public right-of-way will interfere with the use of the street. The ordinance, however, does not state whether the Bureau, in reviewing and evaluating an application for a revocable permit, must ensure the applicant complies with the City's land use laws. The ordinance does not indicate whether private structures, such as the improvements Nolan made to his personal residence on a public right-of-way, are immune from the land use requirements and restrictions in the municipal code by virtue of the fact the homeowner built or maintained the structure on a public right-of-way rather than on his or her property. As noted, the City and Nolan read section 62.118.2 to give the Bureau unfettered discretion to issue a revocable permit to maintain structures on a public right-of-way, without regard to the structures' compliance with other municipal law governing land use. The Boppanas read section

62.118.2 to subject the Bureau's discretion to other applicable municipal law governing the use and development of property. Given the ordinance's silence on this issue, both interpretations are reasonable, and we must consider extrinsic interpretive aids. (See *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 888 [statutory silence "creates an ambiguity"]; *Dreyer's Grand Ice Cream, Inc. v. County of Alameda* (1986) 178 Cal.App.3d 1174, 1182 [same]; *City of Santa Barbara v. California Coastal Zone Conservation Com.* (1977) 75 Cal.App.3d 572, 576 [where the statute and regulation were silent, the petitioner in an administrative mandate proceeding was "entitled to rely upon an administrative construction resolving this ambiguity"].)

2. *The Boppanas' Interpretation of Section 62.118.2 Is More Reasonable*

We turn first to a particularly relevant extrinsic aid: the Bureau's interpretation of the ordinance. Generally, when a public agency is charged with administering an ordinance, its interpretation of the law is entitled to deference. (See *Heckart v. A-1 Self-Storage, Inc.* (2018) 4 Cal.5th 749, 769 ["'[a]n agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts'"]; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7 [same].) "Although not necessarily controlling . . . , the contemporaneous administrative construction of the enactment by those charged with its enforcement and interpretation is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized." (*Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918,

921; accord, *Marzec v. Public Employees' Retirement System* (2015) 236 Cal.App.4th 889, 907; see *Dr. Leevil, LLC v. Westlake Health Care Center* (2018) 6 Cal.5th 474, 480-481["'[w]hen the [statutory] language is susceptible of more than one reasonable interpretation, . . . we look to a variety of extrinsic aids, including . . . contemporaneous administrative construction'"].) "Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent—the 'weight' it should be given—is . . . fundamentally *situational*." (*Yamaha Corp. of America,* at p. 12.) Greater deference is warranted when, among other things, there has been "careful consideration by senior agency officials." (*Id.* at p. 13; see *Citizens for Beach Rights v. City of San Diego* (2017) 17 Cal.App.5th 230, 241; *Butts v. Board of Trustees of California State University* (2014) 225 Cal.App.4th 825, 840.)

The Bureau, which has experience and expertise in reviewing revocable permit applications, has prepared and promulgated a publication titled "Manual for Work in the Public Right-of-Way" (the Manual) that describes how the Bureau processes applications under section 62.118.2. The Manual includes a preface from City Engineer Gary Lee Moore, who has been the City Engineer and general manager of the Bureau since 2003, stating that the Manual is intended to guide applicants "through the process of obtaining permits required for construction projects within the City's public right-of-way." The Manual states it is for the Bureau's "customers," which include "property owners, utility companies, contractors, the larger private development community, and the general public." Because the Manual is a comprehensive document endorsed by the City Engineer and designed by the agency to explain the procedures for obtaining revocable permit approval, the Bureau's

understanding and interpretation of section 62.118.2, as reflected in the Manual, is entitled to considerable deference.

And the Manual supports the Boppanas' interpretation of section 62.118.2. In particular, the Manual contemplates that, prior to issuing a revocable permit, the Bureau will review the permit application for compliance with the Building Code, Zoning Plan, and Specific Plan, submit the application to other City agencies for review and determination of any conditions of approval, and require the applicant to obtain any necessary permits and approvals from those agencies. For example, in a chart titled "R-PERMIT FLOWCHART – for Customer and Staff Use," the Manual explains that, after a Bureau staff member reviews a revocable permit application "and determines conditions of approval," the next step in the application process is that "Other City agencies review [the] R-Permit application & determine conditions of approval, if necessary." The Manual also provides that, later in the administrative process, the applicant must "complete[ ] other required permit processes, if necessary."

The Manual further provides that proposed encroachments must comply with City standards and may require clearance from other municipal agencies. In a section titled "Revocable Permit Description and Purpose," the Manual states: "The R-Permit review process ensures that encroachments are checked for compliance with the City's specifications for design, use, material, and inspection." Similarly, under "General Conditions or Requirements for a Revocable Permit," the Manual states, "The basis for approval [of a revocable permit application] should, of course, [include] compliance with applicable City standards." The Manual's section on "How to Apply for a Revocable Permit" further explains that other municipal agencies may require

additional conditions and clearances: "The R-Permit may require review and clearance from other agencies. This review often results in conditions determined by the reviewing agency. The Applicant must complete these conditions as part of the R-Permit approval." And the Manual provides that an applicant's failures to comply with "provisions of the [Los Angeles Municipal Code]," "permit requirements," and "City Planning Specific Plan requirements" are violations that allow the Bureau to revoke a permit.

The Manual also specifically contemplates the Bureau will review a revocable permit application for compliance with any applicable Specific Plan. The Manual states: "All R-Permit applications will be checked for City Planning Specific Plan applicability. If your proposed encroachment is within a Specific Plan Area or other special City Planning area, your project must comply with the Specific Plan conditions. Customers will be referred to [the Department of] City Planning for specific requirements." The Manual reiterates this requirement in the "How to Apply for a Revocable Permit" section: "The R-Permit application will be checked if it is within a City Planning Specific Plan Area (or other special area). If applicable, [Bureau] Staff will refer the applicant to City Planning. The Applicant must secure appropriate City Planning Specific Plan approvals as a condition of R-Permit approval." In a section titled "How to Check the R-Permit Application," the Manual instructs Bureau employees that they should review the application to "[v]erify if [the] job is within a City Planning Specific Plan Area," and if it is, the Bureau should "[r]efer [the] Applicant to City Planning," and the "Applicant must secure City Planning approval as a condition of R-Permit approval."

The Manual also explains that the height of fences, walls, and gates are governed by the Zoning Plan and that an application for a revocable permit may require approval by the Department of City Planning: "The allowable height of fences, walls, and gates are stipulated in the Zoning Code. In those cases where the permissible height of fences/walls is not apparent, a condition shall be imposed to require Planning Department approval of a proposal for an apparent over-in-height fence/wall." The Manual further instructs Bureau employees to review permit applications for "compliance with minimum pedestrian passage requirements" and to "[c]heck for Hillside Area requirements."

Thus, numerous provisions of the Manual reflect the Bureau's understanding that the process of permit approval under section 62.118.2 includes compliance with the Building Code, the Zoning Plan, and the Specific Plan. Whether, as the City and Nolan argue, the Manual has "the force of law" is not determinative. The Manual is extrinsic evidence of how the Bureau views, understands, and implements section 62.118.2, and it is relevant to the proper interpretation of the ordinance.[6]

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[6] The City and Nolan rely on statements in a declaration by Burman that they filed in opposition to the Boppanas' petition for writ of administrative mandate. Burman stated that, in his "experience," "improvements constructed in the public right-of-way, including fences and gates, do not require building permits issued by the [Department of Building and Safety]," whose "jurisdiction concerns construction on private property in the City of Los Angeles." Burman also stated it was his "understanding" that "improvements constructed in the public right-of-way are not subject to the City's Zoning Code provisions that apply to adjacent private properties, including for heights of fences and

The City and Nolan contend it would be "absurd" to impose on the Bureau "the entire scope of zoning code and private building permit work in and on City property. The City Charter and [municipal code] clearly provide the [Department of Public Works], the Planning Department and [the Bureau] with different responsibilities and powers. [Section] 62.118.2 is located in [a] Chapter of [the municipal code, Chapter VI] that is hundreds of pages and far removed from the host of building and zoning code provisions that apply to private property. [¶] . . . If the City had intended to subject [revocable permits] to the host of building and zoning code requirements that apply to private property, Section 62.118.2 would have so stated or it would [have] been located in Chapter I (zoning code) or Chapter IX (building code) instead of in Chapter VI (public works and property)."

Certainly courts should interpret statutes and municipal ordinances to avoid absurd results. (See *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 190 [courts should interpret statutes "with a view to promoting the general purpose of the statute and avoiding an interpretation that would lead to absurd consequences"]; *In re Greg F.* (2012) 55 Cal.4th 393, 410 ["[i]n interpreting a statute, courts are obligated to 'adopt a common sense construction over one leading to mischief or absurdity'"]; *Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 533 ["'[a] statute open to more than one

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gates." Those may have been his personal opinions, but it is the interpretation of the agency, not the interpretation of an individual field engineer, that is relevant to the interpretation of section 62.118.2. (See *Heckart v. A-1 Self Storage, Inc.*, *supra*, 4 Cal.5th at p. 769, fn. 9 [agency staff letter reflecting an interpretation """by a single staff member""" was "entitled to little weight"].)

interpretation should be interpreted so as to "'avoid anomalous or absurd results'"'"]; *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 465 [municipal resolutions should be "interpreted to avoid absurd results"].) But the Boppanas' proposed interpretation of section 62.118.2 is not absurd. They do not assert, and we do not conclude, the Bureau is responsible for enforcing all of the ordinances in the Building Code or Zoning Plan. Consistent with the Bureau's interpretation of section 62.118.2 in the Manual, the Bureau's responsibility is limited to reviewing a revocable permit application for compliance with City land use laws, submitting the application for review by other city agencies, and directing the applicant to obtain any other necessary approvals or permits from other agencies. The interpretation of section 62.118.2 reflected in the Manual, which is applicable to all members of the general public and to all buildings, structures or improvements in a public street, is more reasonable than the interpretation the City and Nolan propose for purposes of this litigation.

Indeed, it is the interpretation urged by the City and Nolan, not the interpretation advocated by the Boppanas, that would lead to absurd results. To interpret section 62.118.2 to exempt construction in a public right-of-way from all other municipal laws governing land use would give the Bureau the authority to allow a person to build a house in a street without having to obtain any permits or approvals from the Department of City Planning and the Department of Building and Safety. The interpretation of section 62.118.2 proposed by the City and Nolan would also mean that, although a homeowner needs permits from the Department of City Planning or the Department of Building and Safety to construct a wall or addition

to his or her residence, the homeowner would not need such permits if he or she builds the wall or addition in the street. In enacting section 62.118.2, the City could not have intended such results. (See *Office of Inspector General v. Superior Court* (2010) 189 Cal.App.4th 695, 707 ["[w]e reject an interpretation of a statute that leads to absurd results"]; *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th 1512, 1528 [where one "interpretation of the statute would be irrational and lead to absurd results, while [the other] interpretation is rational and would avoid absurd results, we reject the former and adopt the latter"].) A homeowner should need more, not less, city approval to build a house in the middle of a street.

Finally, we consider the municipal "scheme" of which section 62.118.2 "is a part." (*Dr. Leevil, LLC v. Westlake Health Care Center*, *supra*, 6 Cal.5th at p. 481.) Section 62.118, titled "Exemptions," provides exemptions from the requirements in sections 62.105 through 62.116. In particular, section 62.118 provides that sections 62.105 though 62.116 "shall not be construed to apply" to work under contracts authorized by ordinances or contracts with the Board of Public Works or to work by government agencies on curbs or sidewalks. The placement of section 62.118.1, which allows a person to pay the Department of Public Works to perform paving or surfacing work on a public way, and section 62.118.2, which is the subject of this litigation, under or within section 62.118 strongly suggests that section 62.118.1 and section 62.118.2 are also exemptions from the requirements in sections 62.105 through 62.116. (See *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247 [a "'statute's structure and its surrounding provisions can reveal the semantic relationships that give more precise meaning to the

specific text being interpreted, even if the text may have initially appeared to be unambiguous'"]; *Larkin v. Workers' Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 157 ["[w]e consider the ordinary meaning of the language in question as well as the text of related provisions, terms used in other parts of the statute, and the structure of the statutory scheme"].)

And sections 62.105 through 62.116, from which section 62.118.2 provides an exception, do not apply to the kind of improvements Nolan made on public property. Section 62.105(a) states: "No person shall lay, construct, reconstruct or repair in any street or in, over or through any property or right of way owned by or under the control of the City, any curb, sidewalk, gutter, driveway, approach, roadway surface, pavement, sanitary sewer, sewage works, storm drain, culvert, stairway, retaining wall or similar structure, building or improvement . . . without first obtaining written permit therefor from the Board [of Public Works] and without first obtaining approval of plans and specifications and the lines and grades therefor from the City Engineer."[7] Nolan built gates, pillars, iron and chain fences, and a (non-retaining) concrete wall, not curbs, sidewalks, roadway surfaces, or "similar structure[s], building[s] or improvement[s]." Thus, the structure and organization of this chapter of the municipal code reveals that, while section 62.118.2 is an exemption, it is not an exemption that applies to Nolan's improvements.

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[7] Sections 62.105.1 through 62.105.6 concern the location and dimensions of driveways and curbs, and sections 62.106 through 62.116 concern permits, fees, work requirements, and inspections for work under section 62.105.

3. *The Reliance by the City and Nolan on Sections 91.101.4 and 91.101.5.8 Is Misplaced*

The City and Nolan argue the Boppanas' interpretation of section 62.118.2 "fails in light of the scope provisions" of sections 91.101.4 and 91.101.5.8. They argue that these sections, which describe the scope of the Building Code, prove the Building Code does not apply to construction in a public way.

Section 91.101.4 provides that the Building Code "shall apply to the construction, alteration, moving, demolition, repair, maintenance and use of any building or structure within this jurisdiction, *except* work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this Code, and hydraulic flood control structures." (Italics added.) Section 91.101.5.8 excludes from the scope of the Building Code "[w]ork in a public way, dams and drainage structures constructed by or under contract with the Board of Public Works, the Department of Water and Power and the County Flood Control District, unless the structure forms a portion of the support for a building or a structure coming within the jurisdiction of the Department of Building and Safety."[8]

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[8] Other "work not in [the] scope" of the Building Code includes "[o]ne-story detached accessory structures" such as tool sheds (§ 91.101.5.1), oil derricks (§ 91.101.5.2), "[t]owers or poles supporting public utility communication lines, antennas, or power transmission lines" (§ 91.101.5.3), certain retaining walls (§ 91.101.5.4), certain water tanks (§ 91.101.5.5), "[m]otion picture sets when not supported by any portion of any building" (§ 91.101.5.6), "[p]ergolas and lath houses" (§ 91.101.5.7), and "merry-go-rounds, ferris wheels, rotating conveyances, [and] slides" (§ 91.101.5.9).

The language of sections 91.101.4 and 91.101.5.8 does not support the interpretation proposed by the City and Nolan. In both sections, the words "work in a public way" are grouped with words describing structures that have a public use or benefit, such as public utility towers and poles, mechanical equipment, flood control structures, dams, and drainage structures.[9] (§§ 91.101.4, 91.101.5.) We interpret the exclusion from Building Code jurisdiction for "work in a public way" restrictively, in light of the phrase's relationship to the rest of the words in the sentence. (See *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 960 ["[u]nder [the *noscitur a sociis* canon of statutory construction], 'the meaning of a word may be ascertained by reference to the meaning of other terms which the Legislature has associated with it in the statute, and . . . its scope may be enlarged or restricted to accord with those terms'"]; *People ex rel. Lungren v. Superior Court* (1996)14 Cal.4th 294, 307 ["'a court will adopt a restrictive meaning of a listed item if acceptance of a more expansive meaning would make other items in the list unnecessary or redundant, or would otherwise make the item markedly dissimilar to the other items in the list'"]; see also *People v. Prunty* (2015) 62 Cal.4th 59, 73 ["the *noscitur a sociis*

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9 "'Public utility' includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof." (Pub. Util. Code, § 216.) Hydraulic flood control is "the act or technique of controlling river flow." (https://www.dictionary.com/browse/flood-control?s=ts.) A dam or drainage structure is construction that controls water flow. (https://www.dictionary.com/browse/dam?s=ts.)

canon of construction" means "that a word literally 'is known by its associates'"].) Nolan's fences and gates are not like the structures listed in the ordinances. Unlike structures for a public utility, flood control, and drainage, Nolan's structures serve no public purpose. Nolan's fences and gates do not fall within the exclusion from the Building Code in sections 91.101.4 and 91.101.5.8 for "work in a public way."

D. *Mandamus Relief Is Appropriate*

The Bureau had a mandatory, ministerial duty under section 62.118.2 to consider the applicability of the Building Code, the Zoning Code, and the Specific Plan, rather than consciously ignoring them. The trial court should have granted the Boppanas' petition for writ of mandate. (See *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442 ["[m]andamus may issue . . . to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law"]; *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1266 [same]; *Morris v. Harper* (2001) 94 Cal.App.4th 52, 60 [""""[i]t is the refusal or neglect to perform an act which is enjoined by the law as a present duty that serves as the very foundation for the [mandamus] proceeding,""" italics omitted]; see also *Weisman v. Board of B. & S. Commrs.* (1927) 85 Cal.App. 493, 494 [a municipal ordinance is "a law, within the meaning of section 1085 of the Code of Civil Procedure"].)

DISPOSITION

The judgment denying the petition for a writ of mandate is reversed. The matter is remanded with directions for the trial court to issue a writ of mandate compelling the Bureau to revoke the permit it issued to Nolan without determining whether Nolan's improvements complied with applicable municipal land use laws. The Boppanas are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.